

**2021**  
**CUMULATIVE SUPPLEMENT**  
**TO**  
**MISSISSIPPI CODE**  
**1972 ANNOTATED**

**Issued September 2021**

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI  
ENACTED THROUGH THE 2021 REGULAR SESSION  
OF THE LEGISLATURE**

**PUBLISHED BY AUTHORITY OF  
THE LEGISLATURE**

**SUPPLEMENTING**

**Volume 21**

**Title 97**

**(As Revised 2020)**

**For latest statutes or assistance call 1-800-833-9844**

**By the Editorial Staff of the Publisher**



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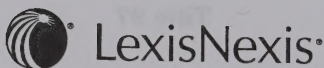
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## FUELL User's Guide WORD

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

### Annotations

Case annotations are included based on decisions of the State and Federal courts in cases citing to Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the process that are used to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we have used cases as soon as they are released by the courts. A consequence of this more current posting of cases, as they are posted online on LexisNexis, is that sometimes cases have appeared that may not yet have print reporter citations. These will be provided as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be posted in the following reporters:

Southern Reporter, 2d Series  
United States Federal Court Reports  
Supreme Court Reports  
United States Supreme Court Reports, Lawyers Edition, 3d Series  
Federal Reporter, 4th Series  
Federal Supplement, 2d Series  
Federal Rules Decisions  
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 4th Series  
American Law Reports, Federal 2d  
Mississippi College Law Review  
Mississippi Law Journal

Finally, with the approval of the Attorney General and opinions of the Ethics Committee, LEXISNEXIS has been authorized for annotations.

### Annotations Status

Annotations will track how the new legislation affects existing sections.

### Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to sections of legislation which have not been codified, or explain other pertinent information.



## **PUBLISHER'S FOREWORD**

### **Statutes**

The 2021 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2021 Regular Legislative Session.

### **Annotations**

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

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Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

### **Amendment Notes**

Amendment notes detail how the new legislation affects existing sections.

### **Editor's Notes**

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

## Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

## Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2021 Regular Session.

## Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

## Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2021

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# SCHEDULE OF NEW SECTIONS

Added in this Supplement

SEC.

## TITLE 97. Crimes

### CHAPTER 7. Crimes Against Sovereignty or Administration of Government.

SEC.

97-7-77.

Fraudulent display or use of tribal identification card; reproduction of tribal identification card with intent that it be offered as valid card prohibited; punishment for violation.

Chapter 7. Crimes Against Sovereignty or Administration of Government.

97-7-1

## CHAPTER 1.

### CONSPIRACY, ACCESSORIES AND ATTEMPTS

#### § 97-1-1. Conspiracy.

## JUDICIAL DECISIONS

### B. Evidence.

#### 1B. Confession

In a case in which defendant was charged of armed robbery and conspiracy after he caught a 14-year old boy in the store, the verdict was not contrary to the overwhelming weight of the evidence because prior to taking the store, the boy and defendant planned to meet at a wooded area not far from the store after he finished the job, after he robbed the store, the boy ran to that wooded area and waited on defendant for several hours before abandoning the bag of money, the mask, gloves, sunglasses, and after an officer found there were items in that wooded area on the night of the robbery, and the boy's testimony was not so contrary to the overwhelming or substantially impeached or warrant reversed pro-

cess - State, 314 So. 2d 1167, 301 Miss. App. 13013 140 Miss. Ct. App. 2023.

In a case where defendant father and defendant adopted son were convicted of conspiracy to commit second battery Miss. Code Ann. §§ 97-1-1 and 97-1-3(1)(a), second battery, Miss. Code Ann. § 97-3-3(1)(b), and contributing to the minor injury of a minor, Miss. Code Ann. § 97-3-3(1), none of the issues raised by defendant father goes to the level of reasonable error either standing alone or when considered together as the evidence supported the finding that defendant father was the perpetrator of the identifiable injuries and he failed to demonstrate any procedural or substantive errors that warranted reversal, thus defendant father's convictions and sentences were affirmed. State's Supp. 201 So. 2d 202, 2003 Miss. 13023 140 (Supp. 2003).



# MISSISSIPPI CODE

## 1972

### ANNOTATED

#### VOLUME TWENTY-ONE

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## TITLE 97.

### CRIMES

Chapter 7.	Crimes Against Sovereignty or Administration of Government. ....	97-7-1
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## CHAPTER 1.

### CONSPIRACY, ACCESSORIES AND ATTEMPTS

#### § 97-1-1. Conspiracy.

#### JUDICIAL DECISIONS

##### 9. Evidence.

##### 16. —Other.

In a case in which defendant was convicted of armed robbery and conspiracy after he coached a 14-year-old boy to rob a store, the verdict was not contrary to the overwhelming weight of the evidence because, prior to robbing the store, the boy and defendant planned to meet at a wooded area not far from the store after he finished the job; after he robbed the store, the boy ran to that wooded area and waited on defendant for several hours before abandoning the bag of money, ski mask, gloves, sunglasses, and rifle; an officer found those same items in that wooded area on the night of the robbery; and the boy's testimony was not so unreasonable, self contradictory or substantially impeached to warrant reversal. Pitt-

man v. State, 314 So. 3d 1167, 2021 Miss. App. LEXIS 146 (Miss. Ct. App. 2021).

In a case where defendant father and defendant adopted son were convicted of conspiracy to commit sexual battery, Miss. Code Ann. §§ 97-1-1 and 97-3-95(1)(d), sexual battery, Miss. Code Ann. § 97-3-95(1)(d), and contributing to the delinquency of a minor, Miss. Code Ann. § 97-5-39(1), none of the issues raised by defendant father rose to the level of reversible error either standing alone or when considered together as the evidence supported the finding that defendant father was the ringleader of the abominable enterprise and he failed to demonstrate any procedural or substantive errors that warranted reversal; thus, defendant father's convictions and sentences were affirmed. King v. State, 857 So. 2d 702, 2003 Miss. LEXIS 450 (Miss. 2003).

## § 97-1-5. Accessories after the fact; punishment.

## JUDICIAL DECISIONS

## ANALYSIS

2. Evidence; generally.
3. —Sufficiency.
4. Instructions.
5. Sentences.

**2. Evidence; generally.**

Circuit court did not err in admitting into evidence an individual's murder conviction because the State of Mississippi used the murder conviction only to show that defendant assisted the individual when defendant handed the individual the keys to defendant's car as a way to escape after the individual shot and killed the victim. To prove that defendant was an accessory after the fact to murder, the admission of the individual's murder conviction was necessary. *Robinson v. State*, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

**3. —Sufficiency.**

Evidence supported defendant's conviction for being an accessory after the fact to a murder because eyewitnesses testified that, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Witnesses also testified that they personally knew that defendant was a member of a gang, and the State of Mississippi presented evidence of defendant's tattoos, which were known gang signs, and of defendant in a gang shirt. *Robinson v. State*, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

Jury's guilty verdict for accessory after the fact to murder was not contrary to the weight of the evidence because a rational juror could conclude that a murder had occurred, and defendant, knowing that a murder had occurred, thereafter knowingly assisted those responsible for the murder to escape or avoid arrest; evidence was presented that defendant assisted with concealing or disposing of physical evidence used in the crime, and he admit-

ted that he assisted one of shooters. *Thames v. State*, 310 So. 3d 1163, 2021 Miss. LEXIS 17 (Miss. 2021).

Evidence was sufficient to support the second defendant's accessory-after-the-fact conviction because the act of shooting and killing the victims had been completed when the second defendant removed the first defendant's weapon from the crime scene and placed it in their car, an investigator testified that a plastic bag was covering the gun, by the time the second defendant took the gun everyone who had been involved in the shooting was injured and effectively incapacitated, and the second defendant only took the first defendant's gun, not the guns or knives carried by the victims. *McCool v. State*, — So. 3d —, 2021 Miss. App. LEXIS 215 (Miss. Ct. App. May 18, 2021).

**4. Instructions.**

Circuit court did not abuse its discretion in giving the State of Mississippi's flight instruction in defendant's trial for being an accessory after the fact to a murder and for participation in gang activity because, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Thus, there was clear probative value of defendant's subsequent flight from the crime scene without rendering assistance. *Robinson v. State*, — So. 3d —, 2021 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 12, 2021).

**5. Sentences.**

Second defendant's 20-year sentence for his accessory-after-the-fact conviction was not grossly disproportionate or otherwise excessive because it was within the statutory requirement, there was no doubt that defendants' crimes were severe, as the first defendant was found guilty on two counts of second-degree murder for the shooting death of a teenage boy and his father, the jury convicted the second defendant of accessory after the fact to sec-

ond-degree murder for removing the first defendant's gun following the shooting, and the initial comparison of the sentence to the severity of the crime did not give

rise to an inference of disproportionality. *McCool v. State*, — So. 3d —, 2021 Miss. App. LEXIS 215 (Miss. Ct. App. May 18, 2021).

## § 97-1-7. Attempt to commit offense; punishment.

### JUDICIAL DECISIONS

#### 2. Indictment.

Indictment was sufficient as to the attempt charge as defendant failed to acknowledge authorities holding that failure was not required to be alleged in

indictments charging attempt, and he proffered no compelling reason to abandon those authorities. *Scott v. State*, 305 So. 3d 145, 2020 Miss. LEXIS 420 (Miss. 2020).

## CHAPTER 3.

### CRIMES AGAINST THE PERSON

## § 97-3-2. Crimes of violence defined.

**Cross References** — Ineligibility of person charged under this section to participate in pretrial intervention program, see § 99-15-107.

### JUDICIAL DECISIONS

#### 1. In general.

Even though the court found that defendant was not parole eligible because he was convicted of two crimes of violence under Miss. Code Ann. § 97-3-2(1), the State conceded that defense counsel's advice regarding parole eligibility was erroneous, as counsel stated at the plea hearing that defendant would be eligible for early release if he met certain other criteria during his incarceration, and therefore the court remanded the case to the trial court for an evidentiary hearing on the voluntariness of defendant's guilty plea. *Hardison v. State*, 317 So. 3d 978, 2021 Miss. App. LEXIS 180 (Miss. Ct. App. 2021).

Circuit court correctly determined that defendant was ineligible for parole because the Mississippi Supreme Court clearly resolved the exact issue presented

on appeal in *Fogleman v. State*, 283 So. 3d 685 (Miss. 2019), defendant pled guilty to attempted murder, which was listed as a crime of violence, and whether the decision in *Fogleman* should be overruled was a decision reserved solely for the Supreme Court. *Gava-Hudson v. State*, 316 So. 3d 641, 2021 Miss. App. LEXIS 39 (Miss. Ct. App. 2021).

Defendant's sentence of life without the possibility of parole was not illegal and did not violate the Eighth Amendment because he was sentenced as a violent habitual, he had previously been convicted of burglary of a dwelling and was sentenced to 25 years, and he had previously been convicted of murder and sentenced to life in prison. *Wilson v. State*, 319 So. 3d 497, 2021 Miss. App. LEXIS 224 (Miss. Ct. App. 2021).

## § 97-3-3. Abortion; causing abortion or miscarriage.

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in (2) by substituting "paragraph (a)" for

“subparagraph (a).” The Joint Committee ratified the correction at its October 19, 2020, meeting.

**§ 97-3-7. Simple assault; aggravated assault; simple domestic violence; simple domestic violence third; aggravated domestic violence; aggravated domestic violence third.**

**JUDICIAL DECISIONS**

**ANALYSIS**

- 6. Indictment or affidavit; generally.
- 7. — Sufficiency of.
- 13. Evidence; generally.
- 18. — Sufficiency.

**6. Indictment or affidavit; generally.**

**7. — Sufficiency of.**

There was no error in the language of the indictment because the charging indictment tracked the statutory language and included each element of the offense.

Pope v. State, — So. 3d —, 2021 Miss. App. LEXIS 275 (Miss. Ct. App. June 29, 2021).

**13. Evidence; generally.**

**18. — Sufficiency.**

Evidence that defendant rocked toward an officer with a rifle draw before the officer fired at defendant response was sufficient to support defendant’s conviction for aggravated assault upon a law-enforcement officer. Turner v. State, — So. 3d —, 2021 Miss. LEXIS 157 (Miss. June 17, 2021).

**OPINIONS OF THE ATTORNEY GENERAL**

“Family or household member”, as that term is used in Sections 97-3-7 and 99-3-7, includes individuals who are married, were married, or who live together in a relationship, although not married; further, it is not limited to a blood relationship and can relate to an in-law relationship or other relatives of one spouse living in the household; however, “boyfriend-girlfriend” (or any other variation of this) relationships are not included in the definition of “family or household member”, unless the persons reside or resided together as spouses; finally, although not falling into the definition of “family or household member”, if the individuals have a biological or legally adopted child

between them, the relationship is also protected. Carrubba, Oct. 6, 2000, A.G. Op. #2000-0588.

The Court hearing a domestic violence charge could prohibit the defendant from possessing a handgun if, pursuant to Miss. Code Ann. § 93-21-11, the Court deems it necessary to protect the victim(s). Where a handgun was stolen from the defendant, recovered by a Police Department, and its return was requested by the defendant, the Department may ask the Court for such an order and if granted, may refuse to return the handgun to the defendant. Dawson, Jr., March 9, 2007, A.G. Op. #07-00101, 2007 Miss. AG LEXIS 89.

## § 97-3-15. Homicide; justifiable homicide; use of defensive force; duty to retreat.

### JUDICIAL DECISIONS

#### ANALYSIS

4. Self-defense; generally.
5. —Evidence.
7. Instructions; generally.
8. —Self-defense.

#### 4. Self-defense; generally.

##### 5. —Evidence.

Circuit court properly denied defendant's motions for a judgment notwithstanding the verdict and for a new trial because it gave all the instructions defendant proposed, defendant made no objection to any of the instructions the State proposed, and there was evidence directly contradicting defendant's claim of self-defense where the evidence showed that when the victim arrived at defendant's house, defendant came out holding his shotgun, which he pointed at the unarmed victim, defendant did not tell the victim to leave, the victim had not threatened defendant either before arriving or at the time of the shooting, and defendant's testimony was contradicted by the evidence. *Ashmore v. State*, 302 So. 3d 707, 2020 Miss. App. LEXIS 528 (Miss. Ct. App. 2020).

Evidence was sufficient to support defendant's convictions of second-degree murder and attempted murder because even if the jury found that the castle doctrine presumption applied, the State presented sufficient evidence to overcome it and defendant's claim of self-defense, as there was evidence that any fight had subsided before defendant shot the victims, the victims were standing passively in the front yard when they were shot, neither victim had a gun when he was shot and only defendant was armed, and a physician testified that one victim was

shot while he was trying to flee and the other victim was shot twice in the back. *Sands v. State*, 315 So. 3d 1066, 2020 Miss. App. LEXIS 562 (Miss. Ct. App. 2020), cert. denied, 314 So. 3d 1162, 2021 Miss. LEXIS 113 (Miss. 2021).

#### 7. Instructions; generally.

##### 8. —Self-defense.

Trial court did not err by refusing to give a jury instruction on the castle doctrine because at no point during his three recorded statements did defendant indicate that the victim had attempted to forcibly enter his vehicle or to remove him from the vehicle, but rather stated that he voluntarily exited his vehicle after the victim approached. In addition, defendant stated that the victim did not begin acting physically aggressive until both were standing outside of the vehicle. *Pulliam v. State*, — So. 3d —, 2020 Miss. App. LEXIS 669 (Miss. Ct. App. Dec. 8, 2020), cert. denied, — So. 3d —, 2021 Miss. LEXIS 201 (Miss. 2021).

Trial court committed reversible error in denying defendant's proposed jury instructions regarding this section rather than giving the question of fact regarding the initial aggressor to the jury for their determination because defendant provided at the very least a meager evidentiary basis for the jury to consider who the initial aggressor was. Defendant was not engaged in criminal activity by asking the victim to leave his home, defendant and his son testified that the victim jumped up from his chair, and they believed he was going to attack defendant. *McNeer v. State*, 307 So. 3d 508, 2020 Miss. App. LEXIS 668 (Miss. Ct. App. 2020).

## § 97-3-19. Homicide; murder defined; first-degree murder; second-degree murder; capital murder; lesser-included offenses.

### JUDICIAL DECISIONS

#### ANALYSIS

##### I. IN GENERAL.

1. In general.
8. Deliberate design; malice.
19. Homicide by persons joining in commission of felony.
22. Indictment.

##### I. IN GENERAL.

###### 1. In general.

The appellate court found merit to defendant's argument that his separate convictions for capital murder and kidnapping violated his right against double jeopardy. Accordingly, the appellate court reversed and rendered the kidnapping conviction and vacated his thirty-year sentence for that conviction. *Gillum v. State*, 303 So. 3d 428, 2020 Miss. App. LEXIS 525 (Miss. Ct. App. 2020).

###### 8. Deliberate design; malice.

Trial court properly denied defendant's motion for a new trial because the evidence was sufficient to find that defendant killed the victim with deliberate design, and not in a heat of passion where defendant began acting aggressively toward the victim in a store, kept his right hand in his pocket, argued with him outside the store, and fired into the car in which the victim was a passenger when it lurched toward the curb and bystanders, the jury could have found that the unintentional bump of a bystander, which resulted in no injuries, was not a sufficient provocation to reduce the killing from murder to manslaughter, and the jury could have found that defendant did not kill the victim in the midst of a violent and uncontrollable rage. *Baker v. State*, 304 So. 3d 707, 2020 Miss. App. LEXIS 590 (Miss. Ct. App. 2020).

Trial court violated defendant's Sixth Amendment rights under the Confrontation Clause by admitting the victim's affidavit into evidence because the affidavit was testimonial hearsay, defendant was unable to cross-examine the victim regarding the statements in the affidavit, and he did not forfeit his right to cross-examine her as he did not kill her to prevent her from testifying at his murder trial. The error was not harmless, and therefore defendant's murder conviction was reversed, because the affidavit helped to establish the premeditation necessary to convict defendant of first-degree murder. *Montson v. State*, 318 So. 3d 1133, 2020 Miss. App. LEXIS 600 (Miss. Ct. App. 2020), cert. denied, — So. 3d —, 2021 Miss. LEXIS 142 (Miss. 2021).

###### 19. Homicide by persons joining in commission of felony.

There was sufficient evidence to convict defendant of capital murder during the commission of a robbery; the State did not need to prove that defendant actually committed the robbery himself, only that he acted in concert with or aided and abetted two others, and there was sufficient evidence to show that defendant participated in one of the three positions needed to rob the store. Furthermore, defendant had gunshot residue on his hand and his DNA was found on a hat found near the cash register. *Booker v. State*, 303 So. 3d 1133, 2020 Miss. App. LEXIS 578 (Miss. Ct. App. 2020).

###### 22. Indictment.

There was no error in the language of the indictment because the charging indictment tracked the statutory language and included each element of the offense. *Pope v. State*, — So. 3d —, 2021 Miss. App. LEXIS 275 (Miss. Ct. App. June 29, 2021).

## § 97-3-21. Homicide; penalty for first- or second-degree murder or capital murder.

### JUDICIAL DECISIONS

#### 4. Sentencing factors.

Circuit court applied the correct legal standard and appropriately considered all of the *Miller v. Alabama* factors, and defendant juvenile's sentence of life without parole for murder was affirmed; substantial evidence supported the circuit court's findings, including that the crime was jointly planned and executed and there did not appear to be any coercion or peer pressure involved. While defendant made a number of efforts to rehabilitate himself while incarcerated, the circuit court found there was not enough evidence to support a weighing in favor of parole. *Dotson v. State*, — So. 3d —, 2021 Miss. App. LEXIS 73 (Miss. Ct. App. Feb. 23, 2021).

First defendant's two 42-year sentences, one for each count of his second-

degree murder convictions, were not grossly disproportionate or otherwise excessive because they were the maximum allowed under the statute, there was no doubt that defendants' crimes were severe, as the first defendant was found guilty on two counts of second-degree murder for the shooting death of a teenage boy and his father, the jury convicted the second defendant of accessory after the fact to second-degree murder for removing the first defendant's gun following the shooting, and the initial comparison of the sentence to the severity of the crime did not give rise to an inference of disproportionality. *McCool v. State*, — So. 3d —, 2021 Miss. App. LEXIS 215 (Miss. Ct. App. May 18, 2021).

## § 97-3-29. Homicide; killing while committing a misdemeanor.

### JUDICIAL DECISIONS

#### 1. In general.

Because the indictment tracked the language of the manslaughter statute and the maltreatment statute, it was sufficient to put defendant on notice of the charges against her; the indictment's use of the common term "misdemeanor manslaughter" did not render it defective, and the indictment specifically identified not only the underlying misdemeanor (maltreatment) but also the type of maltreatment (failure to provide sufficient medical attention). *Brannan v. State*, — So. 3d —, 2020 Miss. App. LEXIS 593 (Miss. Ct. App. Oct. 20, 2020), cert. denied, — So. 3d —, 2021 Miss. LEXIS 172 (Miss. 2021).

Trial judge did not err or abuse his discretion by denying defendant's motions for judgment notwithstanding the verdict and for a new trial because the evidence was sufficient for the jury to have found she made a deliberate decision not to provide sufficient medical attention to a prisoner, and her decision demonstrated a conscious disregard of a life-threatening risk; defendant knew the prisoner exhibited symptoms of a life-threatening condition and failed to send him to a medical provider. *Brannan v. State*, — So. 3d —, 2020 Miss. App. LEXIS 593 (Miss. Ct. App. Oct. 20, 2020), cert. denied, — So. 3d —, 2021 Miss. LEXIS 172 (Miss. 2021).

## § 97-3-35. Homicide; killing without malice in the heat of passion.

### JUDICIAL DECISIONS

#### ANALYSIS

4. Self-defense.
6. Evidence; generally.
7. — Warranting manslaughter.
8. — Not warranting manslaughter.
18. Miscellaneous.

#### 4. Self-defense.

Evidence was sufficient to overcome the presumption that defendant shot the victim in reasonable self-defense because no dispute existed that defendant shot the victim and later confessed his actions to the police, defendant admitted that he exited his vehicle because the victim's actions had angered him, a physician testified that the victim was at least three feet away when defendant shot him, and after the shooting defendant fled the crime scene. *Pulliam v. State*, — So. 3d —, 2020 Miss. App. LEXIS 669 (Miss. Ct. App. Dec. 8, 2020), cert. denied, — So. 3d —, 2021 Miss. LEXIS 201 (Miss. 2021).

#### 6. Evidence; generally.

#### 7. — Warranting manslaughter.

Evidence was sufficient to support defendant's manslaughter conviction, even though the jury acquitted him of possession of a firearm, because he did not challenge the State's proof on any other ground, and there was sufficient evidence for a rational jury to find that defendant drew his gun and deliberately shot the victim in the face and that defendant did not act in necessary self-defense. *Brown v. State*, — So. 3d —, 2020 Miss. App. LEXIS 627 (Miss. Ct. App. Nov. 17, 2020), cert.

denied, 316 So. 3d 202, 2021 Miss. LEXIS 131 (Miss. 2021).

#### 8. — Not warranting manslaughter.

Trial court properly denied defendant's motion for a new trial because the evidence was sufficient to find that defendant killed the victim with deliberate design, and not in a heat of passion where defendant began acting aggressively toward the victim in a store, kept his right hand in his pocket, argued with him outside the store, and fired into the car in which the victim was a passenger when it lurched toward the curb and bystanders, the jury could have found that the unintentional bump of a bystander, which resulted in no injuries, was not a sufficient provocation to reduce the killing from murder to manslaughter, and the jury could have found that defendant did not kill the victim in the midst of a violent and uncontrollable rage. *Baker v. State*, 304 So. 3d 707, 2020 Miss. App. LEXIS 590 (Miss. Ct. App. 2020).

#### 18. Miscellaneous.

Trial court did not plainly err in instructing the jury on murder and manslaughter because the use of the word "willfully" was not error, defendant did not request an instruction defining "heat of passion," and even though the trial court erroneously omitted language that required the State to prove that the killing was committed either in a cruel or unusual manner or by the use of a dangerous weapon, the error was harmless. *Brown v. State*, — So. 3d —, 2020 Miss. App. LEXIS 627 (Miss. Ct. App. Nov. 17, 2020), cert. denied, 316 So. 3d 202, 2021 Miss. LEXIS 131 (Miss. 2021).

**§ 97-3-47. Homicide; all other killings.****JUDICIAL DECISIONS****ANALYSIS**

- 11. Instructions; generally.
- 19. Evidence insufficient.

**11. Instructions; generally.**

In defendant's first-degree murder trial, the circuit court did not err in refusing to limit the jury instructions to only manslaughter and justifiable homicide; there was no crime of justifiable homicide, and there was sufficient evidence presented to support the circuit court's giving of an instruction on second-degree murder and manslaughter because such were lesser offenses to first-degree murder. *McDowell v. State*, 311 So. 3d 1252, 2021 Miss. App. LEXIS 82 (Miss. Ct. App. 2021).

**19. Evidence insufficient.**

Evidence was insufficient to convict de-

fendant of culpable-negligence manslaughter because his singular act of attempting to remove the victim from the bar did not show negligence of a degree so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life as, while the act might have been negligent, there was no evidence of severe trauma or trauma in multiple locations that could have constituted gross negligence; the only injuries were a few lacerations, which could have been the result of medical intervention, and petechia in the eyes, which could have been caused during resuscitation attempts; and there was no evidence of an extensive struggle between the two men. *Brown v. State*, 304 So. 3d 692, 2020 Miss. App. LEXIS 565 (Miss. Ct. App. 2020).

**§ 97-3-53. Kidnapping; punishment.****JUDICIAL DECISIONS****ANALYSIS****I. UNDER CURRENT LAW.**

- 1. In general.
- 2. Elements of offense.
- 4. Double jeopardy.

**I. UNDER CURRENT LAW.****1. In general.**

Failure of indictment for attempted kidnapping and attempted sexual battery to describe overt acts toward the commission of those crimes was harmless error; defendant was provided ample notice of the nature of the accusations, given the co-conspirators being listed as prosecution witnesses, the testimony given by an investigator during the preliminary hearing, and a private investigator being appointed to assist in the defense. *Mitchell v. State*, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

Defendant failed to preserve an objection to jury instructions, and any error

was harmless; although the instructions, as the indictment, for attempted kidnapping and attempted sexual battery failed to specify an overt act, the indictment did not deprive defendant of notice of the charges against him and the instructions, which generally tracked the indictment, did not substantially alter the essential elements of the crimes. *Mitchell v. State*, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

**2. Elements of offense.**

Reason defendant did not kidnap the victim was because of outside interference, not because defendant decided to abandon the plan, and thus the third element of the crime of attempted kidnapping was satisfied. *Mitchell v. State*, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

There was sufficient evidence of an overt act in furtherance of the kidnapping; in part, defendant recruited and offered to pay a team of men to carry out his plan

and he had already made payments to two of the men, plus he created an elaborate and detailed plan and put much effort to ensure its success, including learning the victim's routines, driving the men to where the victim lived, and procuring the necessary tools to carry out the plan. *Mitchell v. State*, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

4. **Double jeopardy.**

The appellate court found merit to de-

defendant's argument that his separate convictions for capital murder and kidnapping violated his right against double jeopardy. Accordingly, the appellate court reversed and rendered the kidnapping conviction and vacated his thirty-year sentence for that conviction. *Gillum v. State*, 303 So. 3d 428, 2020 Miss. App. LEXIS 525 (Miss. Ct. App. 2020).

§ 97-3-79. Robbery; use of deadly weapon.

JUDICIAL DECISIONS

ANALYSIS

- 12. Sufficiency of evidence; generally.
- 14. Instructions; generally.
- 21. Miscellaneous.

12. **Sufficiency of evidence; generally.**

There was sufficient evidence to support defendant's conviction for armed robbery, as the State produced evidence showing that defendant not only fit the physical description of the robber but also had in his possession large sums of cash, including the five fifty-dollar bills of bait money that had been taken in the bank robbery mere hours before. *Barnett v. State*, 315 So. 3d 458, 2021 Miss. LEXIS 101 (Miss. 2021).

14. **Instructions; generally.**

Although defendant argued that a jury instruction setting out the elements of

armed robbery constructively amended his indictment, the appellate court pointed out that defendant did not object to the instruction at trial, so the issue was waived in the absence of plain error. Because the appellate court was unable to say any forfeited error in the jury instruction prejudiced the defense or otherwise affected defendant's substantial right to a fair trial, the appellate court concluded the instruction was not plain error. *Collins v. State*, 305 So. 3d 1262, 2020 Miss. App. LEXIS 618 (Miss. Ct. App. 2020).

21. **Miscellaneous.**

No error was found in the trial court's order determining that the crime of armed robbery does exist and that defendant was provided full notice of the charge to which he pleaded guilty. *Smith v. State*, 301 So. 3d 98, 2020 Miss. App. LEXIS 425 (Miss. Ct. App. 2020).

§ 97-3-95. Sexual battery.

JUDICIAL DECISIONS

ANALYSIS

- 6. Indictment.
- 7. Evidence; generally; admissibility.
- 11. Practice and procedure; jury instructions.

6. **Indictment.**

Trial court did not err in allowing the State to amend defendant's indictment

because the indictment fully and fairly advised him of the charges against him, as time was not an essential element of the crime of sexual battery, the amendment was to conform with the proof, namely to expand the date range of the alleged crime to January 2013, and defendant was not prejudiced. *Stone v. State*, — So. 3d —, 2021 Miss. App. LEXIS 177 (Miss. Ct. App. Apr. 27, 2021).

Failure of indictment for attempted kidnapping and attempted sexual battery to describe overt acts toward the commission of those crimes was harmless error; defendant was provided ample notice of the nature of the accusations, given the co-conspirators being listed as prosecution witnesses, the testimony given by an investigator during the preliminary hearing, and a private investigator being appointed to assist in the defense. *Mitchell v. State*, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

Use of the words “engaged in sexual penetration” in combination with a description of the specific means of sexual penetration was sufficient to charge the crime of sexual battery in the indictment and whether the term “to” or “into” was used with respect to the alleged form of penetration in the victim’s mouth or defendant’s anus was immaterial because the method of achieving sexual penetration was not an element of the offense. *Luis Felipe Torres Mendez v. State*, 309 So. 3d 1109, 2020 Miss. App. LEXIS 464 (Miss. Ct. App. 2020).

Defendant’s indictment contained the essential elements of the crime of sexual battery and he was provided sufficient facts to fairly inform him of the charge against which he must defend, as well as

sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense and thus, the indictment was not defective. *Luis Felipe Torres Mendez v. State*, 309 So. 3d 1109, 2020 Miss. App. LEXIS 464 (Miss. Ct. App. 2020).

#### **7. Evidence; generally; admissibility.**

Admission of a photograph of the victim’s cervical injuries was not an abuse of discretion, as, among other things, it aided the State in proving sexual penetration, an essential element of sexual battery. *Bliss v. State*, — So. 3d —, 2021 Miss. App. LEXIS 80 (Miss. Ct. App. Feb. 22, 2021).

#### **11. Practice and procedure; jury instructions.**

Defendant failed to preserve an objection to jury instructions, and any error was harmless; although the instructions, as the indictment, for attempted kidnapping and attempted sexual battery failed to specify an overt act, the indictment did not deprive defendant of notice of the charges against him and the instructions, which generally tracked the indictment, did not substantially alter the essential elements of the crimes. *Mitchell v. State*, — So. 3d —, 2021 Miss. App. LEXIS 129 (Miss. Ct. App. Mar. 23, 2021).

## **CHAPTER 5.**

### **OFFENSES AFFECTING CHILDREN**

#### **§ 97-5-23. Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person.**

#### **JUDICIAL DECISIONS**

##### **10. Constitutionality.**

Circuit court properly convicted defendant, upon a jury verdict, of gratification of lust because the statute was not unconstitutionally vague since the most natural understanding of the phrase “over the age of eighteen” included individuals, like defendant, who had passed their 18th birth-

day, and the prosecutor never commented on the fact that defendant did not testify, nor did she insinuate to the jury that he was guilty because of his decision not to testify. *Barnes v. State*, — So. 3d —, 2021 Miss. App. LEXIS 277 (Miss. Ct. App. June 29, 2021).

**§ 97-5-33. Exploitation of children; prohibitions.**

**JUDICIAL DECISIONS**

**3. Evidence.**

In a termination of parental rights case, the trial court did not err in finding that the father was convicted of child exploitation as it was inconsequential whether he committed that crime with a person under

the age of 18 or an officer posing as a person under the age of 18 as either could result in a conviction for child exploitation; and his intent was present. In re M.R.H., 312 So. 3d 385, 2020 Miss. App. LEXIS 556 (Miss. Ct. App. 2020).

**§ 97-5-35. Exploitation of children; penalties.**

**JUDICIAL DECISIONS**

**1. Sentence.**

Trial judge sentenced defendant to ten years in the custody of the Mississippi Department of Corrections, with five years to serve, and placed defendant on five years of post-release supervision. Inasmuch as the sentence imposed by the trial judge was less than the State's rec-

ommendation, and the amount of time that defendant was sentenced to actually serve was the minimum allowed by the statute, the appellate court found no error in the circuit court's judgment. Wallace v. State, 312 So. 3d 1202, 2020 Miss. App. LEXIS 560 (Miss. Ct. App. 2020).

**§ 97-5-39. Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child.**

**JUDICIAL DECISIONS**

**I. UNDER CURRENT LAW.**

**4. Evidence.**

Sufficient evidence was presented to support defendant's conviction for felony starvation of a minor child because, according to defendant's own statements to investigators, defendant was responsible for feeding the undernourished child of defendant's paramour from when defendant, the paramour, and the child began living together and reasonable minds could have concluded that the child's malnourishment continued and worsened while under defendant's care. Hampton v. State, 309 So. 3d 1055, 2021 Miss. LEXIS 3 (Miss. 2021).

Insufficient evidence was presented to support defendant's felonious burning of a minor child conviction because the State of Mississippi failed to prove that defendant intentionally, knowingly, or recklessly caused the burns to the body of the child of defendant's paramour, either as a principal or an accomplice. That defendant failed to seek medical care and offered no explanation for what occurred in defendant's household was not proof or evidence that defendant or anyone else knowingly or recklessly caused the child's burn injury. Hampton v. State, 309 So. 3d 1055, 2021 Miss. LEXIS 3 (Miss. 2021).

## CHAPTER 7.

**CRIMES AGAINST SOVEREIGNTY OR  
ADMINISTRATION OF GOVERNMENT**

Sec.

97-7-77.

Fraudulent display or use of tribal identification card; reproduction of tribal identification card with intent that it be offered as valid card prohibited; punishment for violation.

**§ 97-7-10. Fraudulent statements and representations.****JUDICIAL DECISIONS****1. Evidence.**

Because the State failed to prove beyond a reasonable doubt that defendant knowingly or willfully made, used, or produced the title application with the intent to defraud the officer and defendant testified that it was an employee of the seller, not defendant, that created the title appli-

cation, defendant was entitled to reversal of his conviction for making fraudulent statements and representations to defraud the government. *Harris v. State*, 311 So. 3d 638, 2020 Miss. App. LEXIS 499 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 832, 2021 Miss. LEXIS 32 (Miss. 2021).

**§ 97-7-11. Conspiracy to defraud state; obtaining public funds fraudulently.**

**Cross References** — Ineligibility of person charged under this section to participate in pretrial intervention program, see § 99-15-107.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

**§ 97-7-77. Fraudulent display or use of tribal identification card; reproduction of tribal identification card with intent that it be offered as valid card prohibited; punishment for violation.**

(1) “Tribal identification card” means a valid identification card issued by a federally recognized Indian tribe that contains a color photograph of the card holder and the card holder’s legal name, residence address and date of birth.

(2)(a) It is unlawful for a person knowingly to:

(i) Display, or cause or permit to be displayed, or have in the person’s possession, any cancelled, fictitious, fraudulently altered, forged, counterfeited or fraudulently obtained tribal identification card;

(ii) Permit the use of a tribal identification card issued to the person or lend a tribal identification card to another person;

(iii) Display or represent a tribal identification card not issued to the person as being the person’s card;

(iv) Display or have in the person’s possession a fraudulently altered, forged or counterfeited tribal identification card with intent that the

altered, forged or counterfeited card be offered, accepted or mistaken for a valid tribal identification card.

(b) A violation of this subsection is a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), by imprisonment for not more than six (6) months, or both.

(3)(a) It is unlawful for a person to photograph, copy, duplicate, alter, forge, counterfeit or in any way reproduce, manufacture, sell or distribute a tribal identification card or facsimile thereof with intent that it be offered, accepted or mistaken for a valid tribal identification card.

(b) A violation of this subsection (3) shall be punished as follows:

(i) If the person was twenty-one (21) years of age or older at the time of the offense, the person is guilty of a felony and shall be punished by a fine of not less than Five Thousand Dollars (\$5,000.00), imprisonment for not more than three (3) years, or both.

(ii) If the person was under twenty-one (21) years of age at the time of the offense, a first offense is a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), by imprisonment for not more than six (6) months, or both, and a second or subsequent offense committed by a minor is a misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000.00), imprisonment for not more than one (1) year, or both.

**HISTORY:** Laws, 2021, ch. 378, § 2, eff from and after July 1, 2021.

**Cross References** — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73..

## CHAPTER 9.

### OFFENSES AFFECTING ADMINISTRATION OF JUSTICE

#### ARTICLE 1.

#### IN GENERAL.

### § 97-9-59. Perjury; definition.

#### JUDICIAL DECISIONS

#### 7. Proof, generally.

#### 8. —Sufficiency.

Although a terminated hotel employee protested that a manager of the hotel committed perjury during the employee's hearing for benefits, perjury was defined

by statute and only existed when a person willfully and corruptly swore, testified, or affirmed falsely. However, there was no proof that occurred in the case. *Mayes v. Miss. Dep't of Empl. Sec.*, — So. 3d —, 2021 Miss. App. LEXIS 288 (Miss. Ct. App. July 20, 2021).

## § 97-9-72. Fleeing or eluding a law enforcement officer in a motor vehicle; felonies; sanctions; defenses.

### JUDICIAL DECISIONS

#### ANALYSIS

3. Indictment.
5. Sentence.

#### 3. Indictment.

Evidence was sufficient to support defendant's conviction of felony evasion because there was undisputed evidence that when the officer activated his lights and siren defendant was given a signal to stop, defendant willfully failed to obey the officer's direction to stop and sped away, and when the officer witnessed two undisputed traffic violations—speeding and failure to display a license—he was acting in the lawful performance of his duty and with reasonable suspicion to believe that defendant had committed a crime. *Fogleman v. State*, 311 So. 3d 1221, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. 2021).

Evidence was sufficient to show that a victim suffered serious bodily injury because she testified to suffering from a permanent injury as a result of the collision for which she still experienced physical symptoms and for which she had to use prescription medication. *Fogleman v. State*, 311 So. 3d 1221, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. 2021).

#### 5. Sentence.

Jury was properly instructed on the element of serious bodily injury because the jury had clearly been properly instructed on the requisite elements of the crime including the element of “serious bodily injury,” in one instruction and they were also given a definition of that term in another instruction. *Fogleman v. State*, 311 So. 3d 1221, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. 2021).

## § 97-9-73. Resisting or obstructing arrest; fleeing or eluding law enforcement officer in motor vehicle.

### JUDICIAL DECISIONS

#### 1. In general.

Evidence was sufficient to support defendant's conviction of resisting arrest because his arrest was lawful, he refused to place his hands behind his back and the officers had to physically move his hands

in order to handcuff him, and an officer testified that there was a brief struggle before defendant was placed in the patrol car. *Sims v. State*, — So. 3d —, 2021 Miss. App. LEXIS 197 (Miss. Ct. App. May 4, 2021).

## ARTICLE 3.

## OBSTRUCTION OF JUSTICE.

## § 97-9-113. Intimidating a witness.

### JUDICIAL DECISIONS

#### 1. Evidence.

Conviction for intimidating a witness had to be reversed because there was no proof of intimidation, threats, harassment, or that defendant instructed the

witness to give false statements, as the witness's testimony was that defendant did not pressure her to give false testimony and told the witness to tell the truth. *Rainey v. State*, — So. 3d —, 2021

Miss. App. LEXIS 115 (Miss. Ct. App. Mar. 16, 2021).

3. Constitutionality.

Because defendant's speech, talking to witness to find out what the witness told police, could constitute prosecutable

speech under this section, the appellate court could not hold this section as applied to the facts violated defendant's First Amendment free-speech right. *Rainey v. State*, — So. 3d —, 2021 Miss. App. LEXIS 115 (Miss. Ct. App. Mar. 16, 2021).



